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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 18 2011

UIL Code: 9100.00-00
408A00-00

Date:

T: EP: RA: T2

Legend:

Taxpayer A = *****

Custodian M = *****

Amount A = *****

IRA X = ***** *****

IRA Y = ***** *****

Date 1 = *****

Date 2 = *****

Date 3 = *****

Dear *****:

This is in response to your request dated September 1, 2009, in which you request relief under section 301.9100-3 of the Procedure and Administrative Regulations (the "Regulations"). The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

In December 2007, Taxpayer A maintained an individual retirement account (IRA X), a traditional IRA described in section 408 of the Internal Revenue Code (the "Code"), with Custodian M. Taxpayer A intended to convert IRA X into as a Roth IRA described in section 408A of the Code. On Date 1, after conversing with an associate with Custodian M, Taxpayer A requested that Amount A be transferred from IRA X to IRA Y, as a Roth IRA conversion.

In late 2007 Taxpayer A consulted with an associate at Custodian M. Taxpayer A was advised by the associate to convert IRA X to a Roth IRA. Custodian M then furnished Taxpayer A with a copy of the Regulations relating to section 408A of the

Code (Roth IRA Conversion). Taxpayer A read the Regulations and on Date 1 had a discussion with the associate of Custodian M about the advised Roth conversion. Taxpayer A relayed concern about the availability of the conversion based on his reading of the Regulations provided to him by Custodian M. Specifically, Taxpayer A stated that the conversion was unavailable to him because his modified adjusted gross income exceeded the level permitted by the Regulations. Taxpayer A was assured by Custodian M's associate that he was within the income limit and that the Roth conversion was available to him. The associate assured him there would be no tax consequences to the Roth IRA conversion. He relied on this advice and representation. On Date 1 IRA X was converted into IRA Y, a Roth account with Custodian M.

In preparation of his 2007 return Taxpayer A met with his tax return preparer. His tax return preparer informed Taxpayer A that he was unable to do the Roth conversion because his modified adjusted gross income was above the permitted level. Furthermore, his tax return preparer advised him that the conversion was invalid and taxable. Taxpayer A filed his 2007 return on Date 2 pursuant to a valid extension.

On or about Date 2 Taxpayer A contacted Custodian M about the conversion and the taxability of his Roth IRA. On Date 3 Taxpayer A received a letter from Custodian M explaining that Custodian M had reviewed the recorded phone call on Date 1 and that Taxpayer A was given incorrect information regarding the modified adjusted gross income threshold for a Roth IRA conversion. In the letter dated Date 1 Custodian M takes full responsibility for Taxpayer A's failed Roth IRA conversion.

The statute of limitations on Taxpayer A's 2007 Federal Income Tax Return remains open.

Based on the foregoing facts and representations, you have requested a ruling that, pursuant to section 301.9100-3 of the Regulations you may be granted a period not to exceed 60 days from the date of issuance of this ruling to make an election under section 1.408A-5 of the Income Tax Regulations (the "I.T. Regulations") to recharacterize Amount A as a contribution to a traditional IRA.

With respect to the request for relief under section 301.9100-3 of the Regulations, section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. Under section 408A(d)(6) of the Code and section 1.408A-5 of the I.T. Regulations, this recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal Income Tax Return for the year of contribution.

Section 1.408A-5, Q&A-6, of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

Prior to December 31, 2009, section 408A(c)(3) of the Code provided, in relevant part, that a taxpayer generally is not allowed to make a rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if the taxpayer's adjusted gross income for that year exceeds \$100,000. For taxable years beginning after December 31, 2009, the \$100,000 limitation on adjusted gross income in code section 408A(c)(3)(B) was eliminated

Section 408A(d)(3)(C) provides that a conversion of a traditional IRA to a Roth IRA is treated as a rollover from the traditional IRA to the Roth IRA.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations, in general, provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional,

including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failed Roth IRA conversion was caused by his reliance on incorrect assurances and information furnished by Custodian M. Furthermore, Custodian M has taken full responsibility for the incorrect advice and information as well as the failed Roth IRA conversion.

Based on the above, Taxpayer A meets the requirements of section 301.9100-3(b)(1) of the Regulations, clause (iii), for the 2008 tax year. In addition, since the statute of limitations is still open, under section 301.9100-3(c)(1)(ii) of the Regulations, granting relief will not prejudice the interests of the Government.

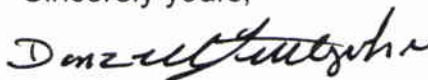
Accordingly, Taxpayer A is granted an extension of 60 days as measured from the date of the issuance of this ruling letter to recharacterize Amount A as a contribution to a traditional IRA.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact ***** , Esq. (ID # *****) at (**) ***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



***** , Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of this letter
Notice of Intention to Disclose

CC:

